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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,459	02/25/2004	Wayne A. Lundeberg	6079.102US	9338

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EXAMINER

PRICE, CRAIG JAMES

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/786,459

Applicant(s)

LUNDEBERG ET AL.

Examiner

Craig Price

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 10-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 17-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species II, as defined in Figures 12-27, listing claims 1-9 and 17 –30 are readable on elected species in the reply filed on 14 August 2006 is acknowledged.
2. Claims 10-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Specification***

3. The abstract of the disclosure is objected to because, the abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. Correction is required. See MPEP 608.01(b).

***Claim Objections***

4. Claims 18 and 30 are objected to because of the following informalities: The claimed limitation does not end with the appropriate punctuation. Claim 28, line 2, "rachet", is spelled incorrectly. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 and 17-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite as it is nearly impossible to tell how many tools or covers or barriers are claimed throughout the amended claims. Please clarify.

Claims 24-30, and 2-9 being dependent from 24, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claimed limitation "extender structure" is unclear, as to what this structure actually is. Please clarify.

**Claim Rejections - 35 USC § 102**

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

and 22-24

ETC

Claims 1-4 and 17-19<sup>^</sup> are rejected under 35 U.S.C. 102(b) as being unpatentable by Jacob (906,886).

Jacob discloses a barrier device (14) for a water meter cover (this claimed limitation “for a water meter cover”, is an intended use statement and not given any patentable weight) having a tool access opening (18), comprising a cap structure (14) configured to be coupled to a water meter cover, cover (23) a tool access opening in the water meter cover (the device is used for a box for a water service pipe Col. 1, Lns. 9-15) in a manner that provides a barrier to materials and objects passing through the tool access opening in the water meter cover, and provide structure for engagement by a tool, to enable a coupled (lugs 17 couple the device) barrier device and cover to be manipulated by the tool as shown in figures 1-7.

Regarding claim 2, Jacob discloses a barrier device, wherein the cap structure comprises a hood (the beveled outer diameter portion of 14) and a stem (the portion projecting down from the hood) extending away from the hood, the stem configured to be pressed into a tool access opening in a water meter cover and to couple (using lugs 17) the barrier device to the water meter cover, and the hood being configured to cover

the tool access opening in the water meter cover when the cap structure is coupled to the water meter cover as shown in figures 1-7.

Regarding claim 3, Jacob discloses a barrier device, wherein the cap structure comprises a recess (25) formed at least partially in the hood and configured for engagement by a tool, to enable a coupled cap structure and cover to be manipulated by the tool as shown in figures 2 and 6.

Regarding claim 4, Jacob discloses a barrier device, wherein the recess includes a mouth through which a tool can be inserted into the recess and a bar (the area of the sectional view in figure 1 above the opening 18) extending at least partially across the mouth and oriented to be engaged by a tool which is inserted into the recess as shown in figure 1.

Regarding claim 17, Jacob discloses a barrier device (14) comprising a one piece structure configured to be coupled to a fluid system cover and including a hood with a border configured to at least partially flatten against a fluid system cover as the one piece structure is being coupled to the fluid system cover (the device flattens onto the cover while it is being assembled onto the cover), so that the border of the hood and the fluid system cover combine to form a barrier to materials and objects near the border of the hood as shown in figure 1.

Regarding claim 18, Jacob discloses a barrier device, wherein the border of the hood is configured to flatten against (the border flattens in the same manner, when the unit is being assembled onto the cover the border flattens against it) the fluid system cover over a predetermined range of positions of the hood relative to the cover and still

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combine with the cover to form a barrier to materials and objects near the border of the hood as shown in figure 1.

Regarding claim 19, Jacob, discloses a barrier device, wherein the one piece structure includes a stem (the projecting portion away from 14) extending away from the hood, the stem configured to be pressed into an opening in a fluid system cover to couple the barrier device to the fluid system cover as shown in figure 1.

Regarding claim 22, Jacob discloses that the stem includes at least one coupling portion (17) that has a coupling position in which it is aligned with a part of a fluid system cover and resists separation of the barrier device from a fluid system cover, and wherein the stem has a flexibility (the material of the stem has some type of flexibility) that enables the coupling portion to flex as the stem is pressed into an opening in a fluid system cover and to be returned to the coupling position when the coupling portion has passed through the opening in the fluid system cover as shown in figure 1.

Regarding claim 23, Jacob discloses that the border of the hood is configured to flatten against the cover over a range of positions of the hood relative to the fluid system cover and still combine with the cover to form a barrier to materials and objects near the border of the hood, and wherein the flexibility of the stem and the location of the coupling portion along the stem are designed to provide a range of positions (through the slots 16 the ramp provides a range of positions) of the coupling portion relative to the cover over which the coupling portion will be in a position to resist separation of the barrier device from the cover, whereby the barrier device can be coupled with a cover whose thickness can vary over a predetermined range (certainly there is a

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manufacturing tolerance in creating the device) and the hood of the barrier device will combine with the cover to form a barrier to materials and objects near the border of the hood over that predetermined thickness range as shown in figures 1 and 4.

Regarding claim 24, Jacob discloses that extender structure (the end portion of the projected diameter from 14) is configured to be integrally coupled to the stem, to provide an extended cap structure that can be coupled to a cover as shown in figure 1.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).



8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacob '886 in view of Saucedo (1,029,719).

Jacob discloses a barrier device, wherein the bar separates the recess into a smaller portion and a larger portion (as shown in the sectional view in figure 1 above the opening 18) as shown in figure 1.

Jacob is silent to the recess being beveled from the portion of the mouth forming part of the larger portion of the recess, to provide convenient access for insertion of a tool into the larger portion of the recess.

Saucedo discloses a cover, which teaches the use of a recess being beveled (the opening of 3 in figures 3 and 4) from the portion of the mouth forming part of the larger portion of the recess.

In view of the Saucedo patent, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize the recess being beveled from the portion of the mouth forming part of the larger portion of the recess of Saucedo into the cover of Jacob in order to prevent the removal of the cover from such boxes by children (Col. 1, Lns. 9-13).

9. Claims 6-9,20,21 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacob '886 in view of Gibney (1,349,610).

Jacob has disclosed all of the features of the claimed limitations including that the stem has an outer wall (the outer wall of the projecting portion from the hood as shown in figure 1) that is closely spaced with respect to the tool access opening when the stem is pressed into the tool access opening and combines with the tool access

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opening to provide a barrier to passage of objects and material between the stem and the tool access opening and wherein the hood has a border (the outer diameter of 14) and the configuration of the hood enables the hood to at least partially flatten (as the top 14 is being installed onto the main opening the top is partially flattening against the opening) against a water meter cover near the border of the hood as the cap structure is being coupled to the water meter cover, so that the border of the hood and the water meter cover combine to form a barrier to materials and objects near the border of the cap structure and wherein the stem includes at least one coupling portion (17) which has a coupling position in which it is aligned with the underside of a water meter cover and resists separation of the device from a water meter cover, and wherein the stem has a flexibility (the material of the stem has a flexibility) that enables the coupling portion to flex as the stem is passing through a tool access opening and to be returned to the coupling position when the coupling portion has passed through the tool access opening and wherein the cap structure has a recess that is formed in the hood and extends at least partially into the stem, the recess configured to allow insertion of a tool for manipulating a coupled cap structure and water meter cover, and the recess extending at least partially into the stem and providing at least part of the outer wall of the stem with a flexibility that enables the coupling portion to flex as the stem is passing through a tool access opening as shown in figure 1.

Jacob is silent to the stem having a closed end which forms a barrier to passage of materials and objects through the stem and an outer wall that is closely spaced with respect to the opening in the fluid system cover when the stem is pressed into the

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opening and combines with the opening to provide a barrier to passage of objects and material between the stem and the opening and wherein the extender structure comprises an extender and a locking member that can be coupled to the extender to couple the extended cap structure to a cover; the stem having a recess with a closed end and the extender comprising a strap configured to pierce the closed end of the recess, extend through the pierced end of the recess and close off the pierced end of the recess, thereby to extend the stem of the cap structure, and the locking member configured to engage the strap in a manner such that the locking member can move along the stem in a first direction for coupling the extended cap structure with a cover and wherein the extender structure comprises an extender and a locking member that can be coupled to the extender to couple the extended cap structure to a cover, the stem having a distal end with an opening and the extender comprising a strap configured to extend through the opening in the distal end of the recess and to close off the opening in the distal end of the recess, thereby to extend the stem of the cap structure, and the locking member configured to engage the strap in a manner such that the locking member can move along the stem in a first direction for coupling the extended cap structure with a cover and wherein the locking member comprises a relatively flat portion with a raised portion having a passageway configured to receive the strap and to move along the strap in the first direction, for coupling the extended cap structure with a cover.

Gibney discloses a cover which teaches the use of a stem (7) having a closed end which forms a barrier to passage of materials and objects through the stem and an

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outer wall that is closely spaced with respect to the opening in the fluid system cover when the stem is pressed into the opening and combines with the opening to provide a barrier to passage of objects and material between the stem and the opening and wherein the extender structure comprises an extender and a locking member that can be coupled to the extender to couple the extended cap structure to a cover; the stem having a recess with a closed end and the extender comprising a strap configured to pierce (as it passes through the opening) the closed end of the recess, extend through the pierced end of the recess and close off the pierced end of the recess, thereby to extend the stem of the cap structure, and the locking member configured to engage the strap (the strap is defined as a component extending through the recess opening) in a manner such that the locking member can move along the stem in a first direction for coupling the extended cap structure with a cover and wherein the extender structure comprises an extender and a locking member (the angle portion of 14) that can be coupled to the extender to couple the extended cap structure to a cover, the stem having a distal end with an opening and the extender comprising a strap configured to extend through the opening in the distal end of the recess and to close off the opening in the distal end of the recess, thereby to extend the stem of the cap structure, and the locking member configured to engage the strap (through the threads 19) in a manner such that the locking member can move along the stem in a first direction for coupling the extended cap structure with a cover and wherein the locking member comprises a relatively flat portion (the top or bottom surface of 14) with a raised portion (the height of 14) having a passageway configured to receive the strap and to move along the strap in

the first direction, for coupling the extended cap structure with a cover.

In view of the Gibney patent, it would have been obvious to one of ordinary skill in the art at the time of invention to employ the stem of Gibney having a closed end which forms a barrier to passage of materials and objects through the stem onto the cover and an outer wall that is closely spaced with respect to the opening in the fluid system cover when the stem is pressed into the opening and combines with the opening to provide a barrier to passage of objects and material between the stem and the opening and wherein the extender structure comprises an extender and a locking member that can be coupled to the extender to couple the extended cap structure to a cover; the stem having a recess with a closed end and the extender comprising a strap configured to pierce the closed end of the recess, extend through the pierced end of the recess and close off the pierced end of the recess, thereby to extend the stem of the cap structure, and the locking member configured to engage the strap in a manner such that the locking member can move along the stem in a first direction for coupling the extended cap structure with a cover and wherein the extender structure comprises an extender and a locking member that can be coupled to the extender to couple the extended cap structure to a cover, the stem having a distal end with an opening and the extender comprising a strap configured to extend through the opening in the distal end of the recess and to close off the opening in the distal end of the recess, thereby to extend the stem of the cap structure, and the locking member configured to engage the strap in a manner such that the locking member can move along the stem in a first direction for coupling the extended cap structure with a cover and wherein the locking

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member comprises a relatively flat portion with a raised portion having a passageway configured to receive the strap and to move along the strap in the first direction, for coupling the extended cap structure with a cover of Jacob in order to provide a valve which surround the valves of water service pipes and enable the same to be reached by a key from the surface of the ground (Col. 1, Lns. 8-14).

10. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacob and Gibney as applied to claim 27 above, and further in view of Bremer et al. (6,022,351).

Jacob and Gibney are silent to the raised portion and strap have respective ratchet structure configured to enable the locking member to move in the first direction along the strap and resisting movement of the locking member in the opposite direction along the strap.

Bremer et al. disclose a barrier device which teaches the use of the raised portion and strap have respective ratchet structure (14) configured to enable the locking member to move in the first direction along the strap and resisting movement of the locking member in the opposite direction along the strap (Col. 5, Lns. 4-5).

In view of the Bremer et al. patent, it would have been obvious to one of ordinary skill in the art at the time of invention to employ the raised portion and strap have respective ratchet structure configured to enable the locking member to move in the first direction along the strap and resisting movement of the locking member in the opposite direction along the strap in order to ensure the assembly remains "secure" (Col. 6, Lns.

11-19).

***Allowable Subject Matter***

11. Claims 29 and 30 objected to as being dependent upon a rejected base claim, but appears allowable given the indefinite nature if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if rewritten to overcome claim objection and rejections.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Morgan (3,761,999), Brooks (2,217,097), Michael (5,250,049), Kamiya (5,131,613), Eldringhoff (3,771,199), Mckinnon (4,163,503), Roese (3,363,797), Crall (1,310,521), Farley (1,229,429), Moutousis et al. (6,719,513), Eyler (4,570,306), Walters (1,867,041), Caveney et al. (5,368,261) all disclose similar devices.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Craig Price whose telephone number is (571) 272-2712. The examiner can normally be reached on 7AM - 5:30PM M-R.

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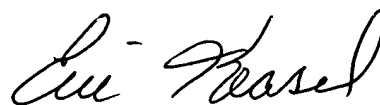
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on (571) 272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CP



30 October 2006



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SUPERVISORY PATENT EXAMINER  
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